

Joseph H. Low IV (SBN 194897)
THE LAW FIRM OF JOSEPH H. LOW IV
One World Trade Center
Suite 2320
Long Beach, CA 90831
Telephone: (562) 901-0840
Facsimile: (562) 901-0841

Attorney for Defendant
LEONARDO SAN JUAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FACTUAL BACKGROUND

Sergeant Leonardo San Juan is currently an active duty United States Marine. He serves in a very specialized unit called Marine Corps Reconnaissance, S.O.Com., which stands for special operations command. Sgt. San Juan's mission is to be inserted, without detection, behind enemy lines and to conduct covert operations against the enemy. These highly trained Marines are unique in that they are to conduct these missions with little or no support. The average Marine Corps infantryman will attack, never defend, enemy positions, secure the object and then rapidly move on to the next area occupied by the enemy. When they do this the infantryman is assisted by support units such as the medics, ammunition supply, food and water supply, air support, artillery support and mechanized (tank) support. The S.O.Com. Recon Marines go in only with what they can carry in their pockets. If they run out of ammo, water or food they will need to fend for themselves.

1 Sgt. San Juan is one of the most decorated Recon Marines in the unit for his acts of
2 heroism, lives he has saved and the missions that he has repeatedly accomplished in combat.
3 Currently, he is being charged with having possession of a war trophy. A single AK-47 that he is
4 accused of bringing back from Iraq. As a result, the government is seeking a conviction for a
5 felony, which the government wants Sgt. San Juan to do prison time for. Further, in order for
6 Sgt. San Juan to continue to conduct the missions that he has trained for years to become
7 proficient at, he must maintain a classified, "secret" security clearance. If he is convicted he will
8 be discharged from the Marine Corps and will lose his career.

9 I.

10 **GOVERNMENT'S MOTIONS IN LIMINE**

11 1. Mrs. San Juan's statements are hearsay with no valid exception or reliability of accuracy.

12 The government seeks to admit a statement by Mrs. San Juan that she made to someone
13 at a shooting range. To date, that witness's information has not been provided to us. Reports
14 have been provided as to what some agent may have heard an anonymous witness say to the
15 agent, but the name of that person was redacted and we have had no meaningful way to interview
16 the witness as to the veracity and accuracy of the statement. In addition, the government has
17 suggested what the witness may say, but has not provided any support for the statements.

18 The hearsay analysis shows that this statement is a triple layer hearsay statement. The
19 government claims that Captain Davis will testify about an out of court statement that he heard
20 from Mrs. San Juan. Further Mrs. San Juan supposedly made an out of court statement to Mr.
21 Davis about what Sgt. San Juan said to her at some other time. Therefore, the government
22 intends to ask the court to have Mr. Davis testify to what Mrs. San Juan said about what Sgt. San
23 Juan said. These statements are clearly hearsay.

24 "Hearsay is a statement, other than one made by the declarant while testifying at the trial
25 or hearing, offered in evidence to prove the truth of the matter asserted." F.R.E 801(c) In this
26 case the government needs to argue that the statement was against the penal interest of Mrs. San
27 Juan so that they can try to push the triple hearsay into the F.R.E. 804(b)(3) category. The
28 government must prove that the statement was "so far contrary to the declarant's pecuniary or

1 proprietary interest, or so far tended to subject the declarant to civil or criminal liability . . .”
2 The government fails to meet this proof standard. Mrs. San Juan supposedly was asked if she
3 has anything easier to use. She supposedly responded that there were weapons in the garage, that
4 were brought back from Iraq by Sgt. San Juan.

5 This analysis fails because even if this accusation were true, Mrs. San Juan was not the
6 one who brought them back from Iraq. Therefore, she cannot have any criminal liability.
7 Therefore it cannot be a statement against her penal interest. This is further highlighted by the
8 fact that when the agents came to the house, she was the only one home and they found a single
9 war trophy weapon only. If this weapon subjected her to criminal liability, why was she not
10 arrested and why was she not charged? There is no declaration against interest. Further, it is
11 required that the witness would not normally make such a statement because they would know
12 that it is a crime to admit such things. The evidence does not show that Mrs. San Juan was aware
13 that the gun was illegal. Again, the government has not made the necessary showing that Mrs.
14 San Juan had criminal liability or a belief that it was criminal at the time the statements were
15 made and as a result, the government cannot admit this evidence.

16 2. The Government Should Not Be Permitted To Admit Statements Regarding the M-4

17 The government seeks to admit evidence of an M-4, which was legally bought and paid
18 for in Texas, which allows such weapons. Had Sgt. San Juan checked the weapon into the base
19 armory, which Marines are allowed to do, he would not have been in any type of violation. Sgt.
20 San Juan's legal residence is in Texas. Since he is in the military, they are often moved from
21 state to state and from country to country. As a result, they are not required to change the license
22 plates on their vehicles and can vote absentee for their state of record. However, Sgt. San Juan
23 has not been convicted of a crime involving the M-4 and therefore evidence surrounding this
24 weapon should be inadmissible due to F.R.E. 401 and 403. The evidence is irrelevant to these
25 proceedings and the evidence is more prejudicial than it is probative. He clearly is not charged
26 in the federal court indictment because it is not a federal crime to own this weapon. Since this
27 weapon does not have an inherent illegal nature, it has not relevance or bearing to the case at
28 hand.

1 Further the prosecution suggests that ownership of the weapon somehow suggests
2 criminal liability on the part of Mrs. San Juan. This is not possible since the prosecution states
3 that she was not the owner of the weapon and it is not a federal crime to even own such a
4 weapon. So how can she make a declaration against penal interest if it is not a federal crime to
5 own the weapon and she was not the owner?

6 **3. The Statements Should Not Be Limited OR Admitted.**

7 The government seeks to admit triple hearsay that cannot be proven to be reliable in any
8 way. The government argues that the statements are reliable due to the fact that a single AK-47
9 was found. However, the statement that they seek to admit is that there were 50 of them. The
10 evidence that they seek to admit contradicts the evidence that was found. In order to prove
11 reliability the government must have sufficient and persuasive corroborating evidence. In this
12 case the government can only produce contradictory and non-corroborating evidence. Therefore,
13 the triple hearsay rumors should not be admitted.

14 Further, the government has stated that the defense has stated what our defense would be.
15 On the contrary, we simply provided a witness list of individuals, some of which will say that
16 they have access to the garage where the war trophy was found. I am not sure how the
17 government can state as to what our defense is since she has not been apart of our team and we
18 have not given them permission to listen to our telephone calls.

19 **4. Sgt. San Juan's Supposed Statements**

20 To date we have not been provided with any of the statements alleged in the
21 government's motion. Reading it in this motion was the first that we have been made aware of
22 these alleged statements. The defense will concede that if the government produces a statement
23 that purports to be an admission by the defendant, that under F.R.E. 801(d)(2) such statements
24 would appear to be admissible. However, to date we have not received any such evidence. If
25 you will recall, he government stated that they had provided us with all of the discovery. You
26 would think that a defendant's admission to the crime would have been something that we would
27 have received in the beginning rather than on the realization that the case is going to go to trial.

28 However, Sgt. San Juan's statements to Mrs. San Juan, which were advising her of her

1 rights, should not be admissible as they are perfectly legal and in no way interfered with the
2 serving of a subpoena. Therefore, these statements are simply intended to be used as F.R.E. 403
3 prejudicial statements and are not probative as to whether or not Sgt. San Juan was in possession
4 of an illegal weapon.

5

6 **CONCLUSION**

7 For the reasons stated above, and for any other reason that the Court may deem just and
8 proper, defendant Leonardo San Juan respectfully requests that the Court deny the governments
9 motion to admit the triple hearsay statements by Mrs. San Juan, the evidence of the M-4 and
10 statements not provided in discovery by Sgt. San Juan.

11

12 DATED: May 29, 2008

13 Respectfully Submitted,

14

15 */s/ Joseph H. Low IV* _____
16 JOSEPH H. LOW IV
17 Attorney for Defendant
18 Leonardo San Juan
19 Email: joseph@jhllaw.com

20

21

22

23

24

25

26

27

28

1
2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5
6

7 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3239-JM
8 vs. Plaintiff,)
9 LEONARDO SAN JUAN, JR.)
10 Defendant.)
11
12

13 IT IS HEREBY CERTIFIED THAT:

14 I, MEGAN TANKERSLEY, am a citizen of the United States and am at least eighteen
15 years of age. My business address in One World Trade Center, Suite 2320, Long Beach, CA
16 90831.

17 I am not a party to the above-entitled action. I have caused service of **DEFENDANT'S**
18 **OPPOSITION TO GOVERNMENTS MOTIONS IN LIMINE** on the following parties by
19 electronically filing the foregoing with the Clerk of the District Court using ECF System, which
20 electronically notifies them.

21 Karen P. Hewitt
22 United States Attorney
23 Nicole Acton Jones
24 Assistant U.S. Attorney

25 I declare under penalty of perjury that the foregoing is true and correct.
26

27 Executed on May 30, 2008

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
5530
5531
5532
5533
5534
5535
5536
5537
5538
5539
55310
55311
55312
55313
55314
55315
55316
55317
55318
55319
55320
55321
55322
55323
55324
55325
55326
55327
55328
55329
55330
55331
55332
55333
55334
55335
55336
55337
55338
55339
55340
55341
55342
55343
55344
55345
55346
55347
55348
55349
55350
55351
55352
55353
55354
55355
55356
55357
55358
55359
55360
55361
55362
55363
55364
55365
55366
55367
55368
55369
55370
55371
55372
55373
55374
55375
55376
55377
55378
55379
55380
55381
55382
55383
55384
55385
55386
55387
55388
55389
55390
55391
55392
55393
55394
55395
55396
55397
55398
55399
553100
553101
553102
553103
553104
553105
553106
553107
553108
553109
553110
553111
553112
553113
553114
553115
553116
553117
553118
553119
553120
553121
553122
553123
553124
553125
553126
553127
553128
553129
553130
553131
553132
553133
553134
553135
553136
553137
553138
553139
553140
553141
553142
553143
553144
553145
553146
553147
553148
553149
553150
553151
553152
553153
553154
553155
553156
553157
553158
553159
553160
553161
553162
553163
553164
553165
553166
553167
553168
553169
553170
553171
553172
553173
553174
553175
553176
553177
553178
553179
553180
553181
553182
553183
553184
553185
553186
553187
553188
553189
553190
553191
553192
553193
553194
553195
553196
553197
553198
553199
553200
553201
553202
553203
553204
553205
553206
553207
553208
553209
553210
553211
553212
553213
553214
553215
553216
553217
553218
553219
553220
553221
553222
553223
553224
553225
553226
553227
553228
553229
5532210
5532211
5532212
5532213
5532214
5532215
5532216
5532217
5532218
5532219
5532220
5532221
5532222
5532223
5532224
5532225
5532226
5532227
5532228
5532229
55322210
55322211
55322212
55322213
55322214
55322215
55322216
55322217
55322218
55322219
55322220
55322221
55322222
55322223
55322224
55322225
55322226
55322227
55322228
55322229
553222210
553222211
553222212
553222213
553222214
553222215
553222216
553222217
553222218
553222219
553222220
553222221
553222222
553222223
553222224
553222225
553222226
553222227
553222228
553222229
5532222210
5532222211
5532222212
5532222213
5532222214
5532222215
5532222216
5532222217
5532222218
5532222219
5532222220
5532222221
5532222222
5532222223
5532222224
5532222225
5532222226
5532222227
5532222228
5532222229
55322222210
55322222211
55322222212
55322222213
55322222214
55322222215
55322222216
55322222217
55322222218
55322222219
55322222220
55322222221
55322222222
55322222223
55322222224
55322222225
55322222226
55322222227
55322222228
55322222229
553222222210
553222222211
553222222212
553222222213
553222222214
553222222215
553222222216
553222222217
553222222218
553222222219
553222222220
553222222221
553222222222
553222222223
553222222224
553222222225
553222222226
553222222227
553222222228
553222222229
5532222222210
5532222222211
5532222222212
5532222222213
5532222222214
5532222222215
5532222222216
5532222222217
5532222222218
5532222222219
5532222222220
5532222222221
5532222222222
5532222222223
5532222222224
5532222222225
5532222222226
5532222222227
5532222222228
5532222222229
55322222222210
55322222222211
55322222222212
55322222222213
55322222222214
55322222222215
55322222222216
55322222222217
55322222222218
55322222222219
55322222222220
55322222222221
55322222222222
55322222222223
55322222222224
55322222222225
55322222222226
55322222222227
55322222222228
55322222222229
553222222222210
553222222222211
553222222222212
553222222222213
553222222222214
553222222222215
553222222222216
553222222222217
553222222222218
553222222222219
553222222222220
553222222222221
553222222222222
553222222222223
553222222222224
553222222222225
553222222222226
553222222222227
553222222222228
553222222222229
5532222222222210
5532222222222211
5532222222222212
5532222222222213
5532222222222214
5532222222222215
5532222222222216
5532222222222217
5532222222222218
5532222222222219
5532222222222220
5532222222222221
5532222222222222
5532222222222223
5532222222222224
5532222222222225
5532222222222226
5532222222222227
5532222222222228
5532222222222229
55322222222222210
55322222222222211
55322222222222212
55322222222222213
55322222222222214
55322222222222215
55322222222222216
55322222222222217
55322222222222218
55322222222222219
55322222222222220
55322222222222221
55322222222222222
55322222222222223
55322222222222224
55322222222222225
55322222222222226
55322222222222227
55322222222222228
55322222222222229
553222222222222210
553222222222222211
553222222222222212
553222222222222213
553222222222222214
553222222222222215
553222222222222216
553222222222222217
553222222222222218
553222222222222219
553222222222222220
553222222222222221
553222222222222222
553222222222222223
553222222222222224
553222222222222225
553222222222222226
553222222222222227
553222222222222228
553222222222222229
5532222222222222210
5532222222222222211
5532222222222222212
5532222222222222213
5532222222222222214
5532222222222222215
5532222222222222216
5532222222222222217
5532222222222222218
5532222222222222219
5532222222222222220
5532222222222222221
5532222222222222222
5532222222222222223
5532222222222222224
5532222222222222225
5532222222222222226
5532222222222222227
5532222222222222228
5532222222222222229
55322222222222222210
55322222222222222211
55322222222222222212
55322222222222222213
55322222222222222214
55322222222222222215
55322222222222222216
55322222222222222217
55322222222222222218
55322222222222222219
55322222222222222220
55322222222222222221
55322222222222222222
55322222222222222223
55322222222222222224
55322222222222222225
55322222222222222226
55322222222222222227
55322222222222222228
55322222222222222229
553222222222222222210
553222222222222222211
553222222222222222212
553222222222222222213
553222222222222222214
553222222222222222215
553222222222222222216
553222222222222222217
553222222222222222218
553222222222222222219
553222222222222222220
553222222222222222221
553222222222222222222
553222222222222222223
553222222222222222224
553222222222222222225
553222222222222222226
553222222222222222227
553222222222222222228
553222222222222222229
5532222222222222222210
5532222222222222222211
5532222222222222222212
5532222222222222222213
5532222222222222222214
5532222222222222222215
5532222222222222222216
5532222222222222222217
5532222222222222222218
5532222222222222222219
5532222222222222222220
5532222222222222222221
5532222222222222222222
5532222222222222222223
5532222222222222222224
5532222222222222222225
5532222222222222222226
5532222222222222222227
5532222222222222222228
5532222222222222222229
55322222222222222222210
55322222222222222222211
55322222222222222222212
55322222222222222222213
55322222222222222222214
55322222222222222222215
55322222222222222222216
55322222222222222222217
55322222222222222222218
55322222222222222222219
55322222222222222222220
55322222222222222222221
55322222222222222222222
55322222222222222222223
55322222222222222222224
55322222222222222222225
55322222222222222222226
55322222222222222222227
55322222222222222222228
55322222222222222222229
553222222222222222222210
553222222222222222222211
553222222222222222222212
553222222222222222222213
553222222222222222222214
553222222222222222222215
553222222222222222222216
553222222222222222222217
553222222222222222222218
553222222222222222222219
553222222222222222222220
553222222222222222222221
553222222222222222222222
553222222222222222222223
553222222222222222222224
553222222222222222222225
553222222222222222222226
553222222222222222222227
553222222222222222222228